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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/399,630	09/20/1999	GARY M. REYNOLDS	KCC-12.681	2481

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EXAMINER

REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/09/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/399,630

Applicant(s)

REYNOLDS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 60-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 60-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9-26-03 has been entered.

Specification

2. It is noted that the Summary of the Invention section is not commensurate with the claims 60-85 as now filed, see MPEP 608.01(d) and 1302.01, e.g. where is a waist band as claimed set forth in the Summary?

Claim Objections

3. Claims 60-85 are objected to because of the following informalities: in claim 60, line 11, change "a" to --at least one--, see claim 42. In claims 62 and 74, lines 2-3, delete "the gasketing assembly comprises", see page 14, lines 16 et seq of the instant application. In claim 65, lines 1-2, change "gasketing assembly" to --the gasket element--, see page 14, lines 16 et seq of the instant application. In claims 71, and 78, lines 1-2, change "gasketing assembly" to --the at least one gasket element--. In claim 75, line 5, before "comprising", insert --said article further--, line 7, change "a"(last) to --at least one--, line 8, change "a"(first) to --the-- and change

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“conditioned” to --condition--. In claim 80, line 9, change “a” to --at least one--. In claims 83 and 85, line 3, change “a”(last) to --the--. In claim 85, line 1, before “wherein”, insert --wherein the at least one gasket element comprises a plurality of gasket elements and--. Appropriate correction is required.

Claim Language Interpretation

4. Since no terms have been specifically defined in the specification, the claim terms will be given their common meaning, i.e. dictionary definition.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 60-85 are rejected under 35 U.S.C. 102(e) as being anticipated by Sayama '098.

Claims 60, 62-63, 75-77, 80 and 82: see embodiment of Figures 1-4 and the embodiment of Figure 5, i.e. the absorbent article is 1 and 2, the front waist section is 16, the rear waist section is 17, the stretchable waist band with opposite ends, and thereby rear waist portion, is at least the portion of 17 adjacent 22(it is noted that the claim does not require the waist band be a discrete element of any specific dimensions), the fasteners are 24, the intermediate section is 18, the gasket assembly is 2, the gasket element is a face portion of one or both of the layers of 30 or 38, a base portion is one or both of the layers of an adhered portion of 37 or 37, a thrust portion is one or both the layers of an nonadhered portion(s) of 37 and/or 38, and a compression resistant

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member is 43 or 36, see col. 1, last line. With regard to lines 1-2, i.e. "adapted ... wearer", 5-7, "employable ... tension", and 11 et seq of claim 60, lines 2 et seq of claim 62 and similar language in claims 75 and 80, see col. 2, lines 54-57, col. 3, lines 37-40, col. 3, lines 56-col. 4, line 40, Figure 1 which shows the portions of the gasket element(s) adjacent ends 46 and 47 with gathers in a nonapplied state and Figure 4 which shows the thrust portions unfold as the base portions move apart, e.g. become ungathered, i.e. it is the Examiner's first position that the Sayama reference teaches the function, capabilities, methodology or properties set forth in the claims, i.e. as the ends of the gasket element(s) are tensioned by application to the wearer, i.e. the ends become less gathered, the base portions are spread deploying the face portion(s) of the gasket element(s). In any case, since the Sayama device includes the same structure as claimed, and the device is used in the same manner, i.e. placed on a wearer, for the same purpose, i.e. body waste containment, there is sufficient factual basis for one to conclude that even if Sayama does not explicitly teach the claimed functions, capabilities, methodology or properties, that the same structure of Sayama is also capable inherently of such claimed functions, capabilities, methodology or properties. See MPEP 2112.01. In other words, as the diaper of Sayama is place on the user, the contracted elastic waist band is stretched or tensioned via the fasteners when applied, the gasket element is deployed to move the face portion thereof towards, adjacent and into contact with the adjacent skin of the wearer and keep such contact and the gasket element is adjacent the skin of the rear waist and lower back of the wearer.

Claims 61 and 81: see Figure 1.

Claims 64 and 67: the inner covering is 33.

Claims 65 and 76: there is a thrust portion on each side of the longitudinal centerline.

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Claim 66: there is a member 43 on each side of the longitudinal centerline.

Claim 68: see col. 3, lines 37-43.

Claims 69-70 and 83: see discussion of claims 60, 62-63, 75-77, 80 and 82.

Claims 71 and 78: the face portion is 38, the thrust portion is the nonadhered portion of 37 and the base portion is the adhered portion of 37 and there is such structure on each side of the longitudinal centerline or layer 33 is one gasket element and layer 34 is the other. It is noted that the claim do not require such gasket elements to be separate and discrete.

Claims 72, 79 and 84: see Figure 5.

Claims 73 and 85: see discussion of claim 71 with regard to elements 37 and 38.

Claim 74: see discussion of claims 60, 62-63, 75-77, 80 and 82 and Figure 5. It is noted that the American Heritage Dictionary defines "terminal" as "Of, pertaining to, situated at or forming an end or boundary". Therefore, the claims do not require the ends of the thrust portions be discrete just that some boundary is defined of the portion, see Figures 4-5 wherein the boundaries of the portions are delineated.

Response to Arguments

7. Applicant's arguments have been carefully considered but are either deemed moot in that the issue discussed has not been reraised or are deemed nonpersuasive for the reasons discussed supra.


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Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
December 2, 2003